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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 228

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, ET AL., PETITIONERS

v.

THEODORE BRITTON, DEPUTY COMMISSIONER, ETC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT DEPUTY COMMISSIONER IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the District of Columbia (Pet. App. 3a-11a) is reported at 187 F. Supp. 359. The *per curiam* opinion of the Court of Appeals for the District of Columbia Circuit (Pet. App. 19a-20a) is reported at 289 F. 2d. 454.

JURISDICTION

The judgment of the Court of Appeals was entered on March 23, 1961. A timely petition for rehearing was denied on April 13, 1961. The petition for a writ

of certiorari was filed July 12, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether the courts below correctly held that the finding by the Deputy Commissioner of a common law marriage between the claimant and the deceased employee was supported by substantial evidence.

STATUTE INVOLVED

Section 2 (16) of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1425, 33 U.S.C. 902 (16) provides:

> (16) The term "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death; or living apart for justifiable cause or by reason of his desertion at such time.

STATEMENT

This action was commenced by the petitioners, seeking review of a compensation order issued by the respondent, Deputy Commissioner, under the Longshoremen's and Harbor Workers' Compensation Act. The order awarded compensation benefits to Evelyn Morton. She had sought benefits as the widow of John P. Morton, who died as a result of injuries sustained in the scope of his employment in the District of Columbia.

At a hearing held before the Deputy Commissioner, the petitioners urged that the claimant was not the widow of John P. Morton within the meaning of Sec-

tion 2 (16) of the Longshoremen's and Harbor Workers' Compensation Act, *supra*, p. 2.[1]

The evidence presented on this issue during the administrative proceedings showed that in 1941 the claimant and the deceased had agreed to live as husband and wife (J.A. 92-93). After having lived together for some time in Virginia, they took up residence in the District of Columbia (J.A. 93). They held themselves out to their families and friends and to the public as husband and wife (J.A. 90, 91, 108-109, 118, 123-124), and were so considered by all of their acquaintances (J.A. 107, 118-119, 123-124). They rented living quarters at various places, contracted obligations for family expenses as husband and wife and resided together except when forced by economic necessity to reside apart (J.A. 96-98). While residing apart, they continued to treat each other as man and wife (J.A. 97, 102) and the deceased sent money to the claimant for her support (J.A. 97, 102, 118-119). The deceased procured policies of insurance wherein the claimant was variously named as spouse and beneficiary (J.A. 99-100, 121). They were the parents of two children, both of whom were supported by deceased (J.A. 91, 105, 106, 110). The Deputy Commissioner treated as falsehoods statements to the contrary made by the claimant on a birth record and to Maryland public assistance authorities (Pet. App. 10a).

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[1] Petitioners' argument directed to the question of whether the injury was suffered within the scope of employment was rejected by the courts below and has not been renewed in their petition in this Court.

On the basis of this evidence, the Deputy Commissioner found that the claimant was the surviving common law wife of the deceased and directed compensation (Pet. App. 16a). The district court affirmed the compensation order. It noted the evidence in corroboration of claimant's testimony, the cohabitation as man and wife, and the express agreement between claimant and the deceased to be husband and wife.

The court of appeals in a *per curiam* opinion (Pet. App. 19a-20a) affirmed, holding:

> "the findings do not lack support by substantial evidence on the record considered as a whole."

ARGUMENT

The courts below correctly determined that the finding of a common law marriage was supported by substantial evidence on the record as a whole. This determination turned wholly upon the particular facts of this case and, thus, presents no question of recurring importance in the administration of the Longshoremen's and Harbor Workers' Compensation Act. There is no occasion for further review.

1. While the petitioners suggest a conflict with *Travers* v. *Reinhardt*, 205 U.S. 423, the contention is based on the erroneous premise that the Deputy Commissioner found that the claimant and the deceased employee had denied the existence of a marital relationship. The Deputy Commissioner made no such finding, and there was abundant evidence to support his inference that a common law marriage had come into being under the standard set forth in *Travers*. Here, as in *Travers*, where a common law marriage

was also found, (1) there was an agreement to be husband and wife; and (2) the parties cohabited as, and held themselves out to be, husband and wife.

2. There is no greater merit to the petitioner's reliance upon *Crowell* v. *Benson*, 285 U.S. 22, for the proposition that the Deputy Commissioner's finding was not binding upon the courts below even if supported by substantial evidence. At most, *Crowell* calls for a trial *de novo* only where, unlike here, a "jurisdictional" fact is involved.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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